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GENERAL COUNSEL'S OPINION NUMBER 55-2, DATED 24 JANUARY 1955

The payment of a territorial post differential for temporary duty in the territories and possessions of the United States is not authorized unless the so-called temporary duty fulfills the regulatory definition thereof.

OGC HAS REVIEWED.

TO THE ACTING CHIEF, FINANCE DIVISION

1. You have requested our advice regarding the interpretation to be placed on the phrase "in a travel status" appearing in the definition of "on detail" set forth in the Federal Personnel Manual, at Chapter III, section 350, in connection with the payment of a territorial post differential for temporary duty at a post classified for differential purposes. In addition, you request our comments on your view that in cases of temporary duty at a territorial post, the duties which the employee performs rather than the time spent there determine his eligibility to receive the applicable territorial post differential.

2. Section 350.1(g) of the Federal Personnel Manual reads as follows:

"'on detail' at a post of duty means performing temporarily, at a post other than the post of regular assignment, duties which involve carrying out functions of the post to which detailed. An employee is not 'on detail' to a post if he is there temporarily, in a travel status, performing duties in connection with the duties of his regular position at another post."

A Government employee is said to be in travel status when away from his designated post of duty and engaged in the performance of duties which have a direct relation to the duties normally performed at his permanent station. "The officer or employee works from his headquarters and is considered in travel status when performing duty away therefrom because the distance from headquarters is too great to return each day." (7 Comp. Gen. 89, 91) Since "travel status" and "temporary duty" frequently are used synonymously (21 Comp. Gen. 591), it is our opinion that the impact of the phrase "in a travel status" contained in section 350.1(g) is to preclude the payment of territorial post differentials for what is commonly called "temporary duty". While we may agree with you that it is the nature of the duties which an employee performs while temporarily at a classified territorial post which determines his eligibility for the applicable post differential, we would prefer to place the emphasis on the nature of his assignment.

3. In connection with the general problem of the concurrent payment of post differentials and per diem, we invite attention to the attached unpublished decision of the Comptroller General (B-106469) of 19 December 1951, issued when the Department of State definitions of "on assignment or on transfer" and "on detail" were identical with the definitions presently contained in sections 350.1 (f) and 350.1(g) respectively of the FPM.

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There it is indicated that payment of a post differential, in addition to per diem, may not be authorized for temporary duty. And it is interesting to note that upon reconsideration of this decision in May 1952, the Comptroller General stated:

" . . . Moreover, the term, 'detail', and as used in the Executive Order (10,000) and implementing regulations promulgated by the Department of State, must be construed in the light of the intended purpose of the foreign post differential as expressed in the statutory language (5 U.S.C.A. 118-h), that is, a recruitment incentive to persons stationed outside continental United States. This being true, it would appear that only details of such character and duration as would indicate some substantial degree of permanency to the assignment and which would warrant the payment of additional compensation as a recruitment incentive reasonably may be regarded as details for which the foreign post differential is payable." (31 Comp. Gen. 614, 616).

We would suppose that the revised definition of "on detail" presently found in section 115-g of the Standardized Regulations (Government Civil-ians, Foreign Areas) and which, under controlled circumstances, sanctions the payment of a post differential for temporary duty, was the result of the thinking that the sixty-day requirement provided for gave to such assignments "such character and duration as would indicate some substantial degree of permanency." But be that as it may as regards foreign post differentials, it is our opinion that territorial post differentials may be paid only for "assignment", "transfer", or "detail" as currently defined in the controlling regulations of the Civil Service Commission at section 350.1 (f) and 350.1(g) of the FPM.


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